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International Covenant on Civil and Political Rights

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Human Rights Committee

Decision adopted by the Committee under the Optional Protocol, concerning communication No. 2802/2016*, **

Communication submitted by:	Christian Nekvedavičius (not represented by counsel)
Alleged victim:	The author
State party:	Lithuania
Date of communication:	24 July 2014 (initial submission)
Document references:	Decision taken pursuant to rules 92 and 97 of the Committee's rules of procedure, transmitted to the State party on 15 April 2013 (not issued in a document form)
Date of adoption of decision:	9 November 2017
Subject matter:	Property rights
Procedural issues:	Exhaustion of domestic remedies; consideration by another international procedure
Substantive issues:	Right to a fair trial; discrimination
Articles of the Covenant:	14 and 26
Articles of the Optional Protocol:	2 and 5

1.1 The author of the communication is Christian Nekvedavičius, a national of Lithuania and Germany born in 1946. He claims that the State party has violated his rights under articles 14 and 26 of the Covenant. The Optional Protocol entered into force for the State on 20 November 1991. The author is not represented by counsel.

1.2 The European Court of Human Rights issued a final judgment in relation to the author's case on 10 December 2013.[1] He challenges the decision, which was partially in his favour, as he claims that he has not been granted *restitutio in integrum* of his family's properties.

* Adopted by the Committee at its 121st session (16 October–10 November 2017).

** The following members of the Committee participated in the examination of the communication: Yadh Ben Achour, Ilze Brands Kehris, Sarah Cleveland, Olivier de Frouville, Christof Heyns, Yuji Iwasawa, Ivana Jelić, Bamariam Koita, Marcia V.J. Kran, Photini Pazartzis, Mauro Politi, José Manuel Santos Pais, Yuval Shany and Margo Waterval.

[1] *Nekvedavičius v. Lithuania* (application No. 1471/05), available from http://hudoc.echr.coe.int/eng?i=001-138883.

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Factual background

2.1 The author's father owned land in Lithuania on which he built two houses. In about 1941, during the period when the Soviet army occupied Lithuania, the author's father was repatriated to Germany pursuant to one of the agreements concluded under the auspices of the Treaty of Non-aggression between Germany and the Union of Soviet Socialist Republics, concluded in 1939. The author's brother lived in one of the two houses with his family. In 1943, the author's father paid off the mortgage on the property. The author's father's ex-wife, having returned to Lithuania from Germany following the breakdown of the marriage, contacted the occupying authorities at that time (a "people's judge") and a decision was handed down on 26 June 1948 in effect transferring legal title to the property to her; the property subsequently passed to her daughter in probate. At some time between 1964 and 1968, the title to the land was transferred to third persons.

2.2 After Lithuania regained its independence in 1990, the author applied for the property to be returned to him *in natura* (in kind), pursuant to the 1991 and 1997 legislation[2] on restitution of property rights.[3] He was informed in August 1991 by the Supreme Council of the Republic of Lithuania that he was not entitled to *restitutio in integrum* as he was not a Lithuanian national and was permanently living abroad. The author applied to become a Lithuanian citizen,[4] a process which took three years. In 1997 and again in 1999, he submitted a complete request for *restitutio in integrum* to the authorities. He brought a number of different actions to reclaim the property. He has not yet received any land or compensation.

2.3 In his first court action, the author sought to oblige the authorities to restore his property rights with respect to the two buildings under the Restitution of Property Act 1991. On 16 October 2000, the Kaunas Regional Administrative Court of Kaunas dismissed his claim on the ground that the houses had never been nationalized and had remained private property, owned by his father's ex-wife, as confirmed by the court decision of 1948. Accordingly, the author had no entitlement to the houses under the domestic legislation on restitution of nationalized property. On 13 April 2001, the Supreme Administrative Court upheld this decision.

2.4 The author complained that the local authorities had taken no action to restore his property rights in respect of his father's original plot of land, which he also sought to have returned to him. On 27 November 2001, the court allowed the author's complaint in part. It was established that the documents which the author had submitted to the local authorities were sufficient for them to adopt a decision on the restoration of his property rights. However, the court held that during the period 1999–2001 almost the entire disputed plot had been acquired, and was being used, by other persons. Hence, it was not possible to return the original plot to the author. The court indicated, however, that the author's property rights could be restored to him by other means provided for under the Restitution of Property Act.

2.5 By the same judgment, the court noted the inactivity of the administrative authorities. It ordered the Kaunas County Governor to restore the author's property rights in respect of the plot of land which had belonged to his father, in accordance with the provisions of the Act. No deadline or form of restitution was specified in the court's decision. The parties did not appeal and the decision became final. Following a complaint by the author that the authorities had failed to execute the judgment of 27 November 2001, a writ of execution was issued on 27 March 2002.

2.6 On 19 April 2002, the Kaunas County Governor refused the author's request for *restitution in natura*. The author appealed, and the refusal was quashed by a final judgment

[2] Restitution of Property Act 1991 (as amended on numerous occasions).

[3] Based on article 1 of the law on the implementing conditions of the restoration of private owners' ownership rights to still existing immovable property of 18 June 1991 and article 1 of the Restitution of Property Act of 1 July 1997, which established that immovable property which had been nationalized or expropriated according to the laws of the Union of Soviet Socialist Republics should be returned.

[4] The precise date was not indicated in the communication.

of the Kaunas Regional Administrative Court on 12 February 2004 on the ground that there had been a procedural flaw.[5] Between 2003 and 2006, the administrative authorities made inquiries about the availability of parcels of land within the original plot owned by the author's father. However, it was concluded on several occasions that no parcels of land were available and that the author's rights would therefore have to be restored by other means provided for under the Restitution of Property Act.[6]

2.7 In 2006, the authorities informed the author that, for the purposes of restitution, a new plot of land would be awarded to him. However, in February 2007, they notified the author that he would be compensated in the form of government bonds. The author replied in writing that he would not accept either of those options. On 13 July 2007, the Kaunas County Governor took a decision to restore the author's property rights in respect of the disputed land by awarding him compensation of 23,086 litas (approximately €6,690) in Lithuanian government bonds. The author applied to the administrative courts again, asking them to quash that decision as unlawful and to award him compensation reflecting the full market value of the land, as submitted by him.

2.8 By a final decision of 30 March 2008, the Supreme Administrative Court granted the author's claim in part and quashed the decision of 13 July 2007. It was established that the authorities' decision to restore the author's property rights was invalid as it had been made by the Kaunas County Deputy Governor, who was not competent to adopt such a legal decision. The waiting list approved on 14 September 2011 by the National Land Service indicated that the author was among those eligible for a new plot of land as compensation for the purposes of restoration of their property rights in circumstances where the property could not be returned *in natura*. He has been on that list since 2000.

2.9 Claiming that ownership of the buildings by his father's former spouse and, subsequently, by third persons was unlawful, the author brought a concurrent *rei vindicatio* action before the Higher Regional Court of Kaunas. He requested the return of his father's houses *in natura* and the annulment of the property sale agreements concluded by the administrative authorities and private buyers. On 3 July 2003, the Court dismissed the author's claim. The author states that this decision was based solely upon the fact that his father had left Lithuania in March 1941 as a German national and had therefore, in accordance with the agreements concluded under the Treaty of Non-aggression, lost all his property titles. The decision was upheld by the Court of Appeal on 30 October 2003, in which the Court took the view that the houses were legitimately owned by the subsequent buyers. The author states that his appeal was dismissed in a single sentence found on the last page of the judgment, stating that the court (arbitrarily, the author maintains) refused to review the validity of the alleged property title of the occupants of his late father's houses, contrary to his procedural rights under article 14 (2) of the Lithuanian Code of Civil Procedure of 1964, then in force.[7] He also alleges that the Court relied on article 14 (1) of the Code of Civil Procedure, according to which a court decision is *res judicata* for all persons being party to the proceedings, and disregarded the governing ruling in which the Supreme Court of Lithuania stated that "for those, however, who were not a party to the proceedings, a court judgment has neither a *res judicata* nor a precedent effect .... Therefore, those persons have a right to apply to a court under the circumstances established by the second part of article 14."[8] In this connection, the author refers, inter alia, to the Committee's jurisprudence in *Karel Des Fours Walderode v. Czech Republic*[9] regarding arbitrariness in property disputes.[10] He also states that the Regional Court judges

[5] The decision had not been signed by a competent person.

[6] For example, by the grant of partial compensation.

[7] "The binding nature of a judgment, decision or ruling does not take away from third persons the possibility to turn to the court to have their rights and interests, as protected by the law, secured with regard to which the lawsuit has been neither examined nor decided."

[8] Case No. 3K-3-203/2000 of 21 February 2000, name of the case not given; the author also makes reference to article 61 of the Lithuanian Code of Civil Procedure and paragraph 3 of article 233.

[9] Communication No. 747/1997, Views adopted on 30 October 2001.

[10] Communications No. 516/1992, *Simunek et al. v. Czech Republic*, Views adopted on 19 July 1995; No. 586/1994, *Adam v. Czech Republic*, Views adopted on 23 July 1996; No. 945/2000, *Marik v.*

improperly promoted the interests of one of the parties to the detriment of the others, in a manner contrary to the Committee's jurisprudence.[11]

2.10 The author asserts therefore that since his father was not a party to the proceedings leading to the 1948 judgment, as he lived in Germany from 1941 "behind the iron curtain" and knew nothing about the legal proceedings brought by his ex-wife, a refusal to review the validity of the property title of the occupants of the houses amounted to manifest arbitrariness. The decision not to entertain the request for cassation thus failed to comply with the admissibility criteria outlined in article 346 of the cassation rules.

2.11 On 8 January 2004, the Supreme Court refused to entertain the cassation appeal lodged by the author on the grounds that it raised no important legal issues and therefore did not meet the requirements of articles 346 and 347, para. 1 (3), of the Code of Civil Procedure. The author and his attorney resubmitted the appeal on 9 June 2004.

2.12 On 11 June 2004, the Supreme Court refused to examine the new appeal, as it had been submitted after the expiry of the three-month time limit from the date of the previous decision on the cassation appeal without giving any justification for the delay.[12] The author argues that the deadline for appealing such cases was in fact six months and that the appeal was submitted within five months. He therefore claims that the 11 June decision of the Supreme Court amounted to a further denial of justice.[13]

2.13 The author submitted a complaint to the European Court of Human Rights on 10 December 2004 alleging a violation of article 6 (1) of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) in relation to two sets of procedures: those related to his property rights, and those related to the failure to execute the judgment of 27 November 2001 of the Kaunas Regional Administrative Court in his favour, which was based on the Restitution of Property Act. In its decision, the European Court declared inadmissible his allegation that the proceedings in the property-related case (the one he brings before the Committee) was "unfair", as the last ordinary remedy had been decided on 8 January 2004, the date of the first rejection of the cassation appeal. The complaint before the Court had been submitted to the Court on 10 December 2004 and therefore failed to meet the applicable six-month rule set out in the Convention.[14] The author argues that this decision, adopted within the framework of a written procedure, also constitutes a denial of his rights under article 14 of the Covenant. However, the Court found in the author's favour regarding the unreasonably prolonged restitution proceedings arising out of the November 2001 judgment, which violated article 6 (1) of the Convention, and awarded him €11,600 in non-pecuniary damages, in addition to any applicable tax. In response to this decision, the Lithuanian Board for Land Holdings of the Lithuanian Ministry for Agriculture, Kaunas Branch, made a decision to "restore" the author's property rights (which he claims had never been lawfully extinguished), in respect of his father's land, not including the houses on the land, by awarding him the sum of €4,017 for a 1,806 m^2 parcel of the land. It also informed him that he was on a list of owners who might be awarded, at an undetermined point in the future, a plot of land of 1,200 m^2, which the author claims to be of no value.

Czech Republic, Views adopted on 26 July 2005; and No. 1463/2006, *Gratzinger v. Czech Republic*, Views adopted on 25 October 2007.

[11] See communication No. 387/1989, *Kartunnen v. Finland*, Views adopted on 23 October 1992, para. 7.2.

[12] The author provides a letter from the chair of the Supreme Court of Lithuania for the selection of civil cases, Česlovas Jokūbauskas, which he received on 23 February 2004, after his first cassation appeal was denied, which explains the cassation rules and states that there is a three-month deadline for appeals.

[13] Under article 345, paragraph 1, of the Code of Civil Procedure, a cassation appeal may only be lodged within three months following the date of the entry into force of a disputed judgment or decision.

[14] The Court declared a violation of the Convention in relation to the lack of execution of the judgment based on the Restitution of Property Act. *Nekvedavičius v. Lithuania* (application No. 1471/05), judgment of 17 November 2015.

2.14 The author also points out that the decisions of the European Court of Human Rights in relation to compensation for property in Warsaw Pact member States[15] relate to sovereign States which could have lawfully nationalized property, rather than States like Lithuania which had been under illegal occupation.

The complaint

3.1 The author is claiming a violation of article 14 of the Covenant due to the "manifest arbitrariness of judges and denial of justice" by Lithuanian judges' not having examined the alleged property title of the occupants of his father's houses. The author claims that in its decision of 30 October 2003, the Court of Appeals arbitrarily refused to examine the validity of the property title of the current occupants of the properties and that the judges arbitrarily disregarded legislation[16] and established jurisprudence,[17] which provides a legal basis for his claims,[18] thereby constituting a denial of justice. The author further claims that the dismissal of his first cassation appeal by the Supreme Court constitutes a denial of justice, as it should have been admitted according to a "peremptory provision" of the cassation rules, which establishes that a cassation appeal is admissible "if the Court, in the decision to be reviewed, deviated from the established jurisdiction of the Supreme Court for applying and interpreting the law".[19] The author also considers that the rejection of his amended cassation appeal on 11 June 2004 constitutes a denial of justice.[20] The author argues that the State party's actions in this regard are politically motivated, owing to the fact that many persons within the Government were former office holders under the previous illegal regime who have benefited from these unlawful appropriations and are therefore not inclined to execute lawful restitutions. The author's application to the European Court of Human Rights on this issue was inadmissible as it was lodged after the time limit.[21]

3.2 The author is further alleging a violation of article 26 of the Covenant. He argues that he was excluded from submitting a request for restitution of his inherited property on the grounds that he was living abroad.[22] Although the Court has examined this claim before[23] and found that the claim of discrimination was unsubstantiated, he indicates that as Lithuania has not made a reservation under article 5 (2) (a) of the Optional Protocol preventing successive applications of the same complaint to different mechanisms, and given that the matter has already been examined by the Court and is not currently being examined under another mechanism of international investigation and settlement, the Committee is competent to review this part of his claim as well.

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[15] *Jantner v. Slovakia* (application No. 39050/97), judgment of 4 March 2003; *Brezny v. Slovak Republic* (application No. 23131/93), decision of inadmissibility of 4 March 1996; *Kopecky v. Slovakia* (application No. 44912/98), judgment of 28 September 2004; *Sivova et Koleva c. Bulgaria* (application No. 30383/03), judgment of 15 November 2011; *Maria Atanasiu and others v. Romania* (application Nos. 30767/05 and 33800/06); and *Vasilescu c. Roumanie* (application No. 60868/00), judgment of 8 June 2006.

[16] The author quotes article 14 (2) of the Code of Civil Procedure of 1964 which establishes that a ruling does not preclude third persons from the possibility of requesting the courts to protect their rights and interests vis-à-vis a ruling in which their claims were not examined.

[17] Decision by the Supreme Court in case 3K-3-203/2000 which established that although a court judgment constitutes *res judicata* and is binding, for those who were not party to the proceedings, a court judgment has neither *res judicata* status nor a precedential effect.

[18] The author claims that his father was not part of the legal proceedings as he had emigrated to Germany in 1941 and therefore article 14 (2) should have been applied regarding his claims.

[19] Translation provided by the author.

[20] No further details are provided in this regard.

[21] According to article 35 (1) of the Convention, an application can only be made within a period of six months from the date on which the final decision was made.

[22] The author was first informed of this matter in 1991, before the Optional Protocol entered into force for the State party.

[23] The Court dealt with this issue in its decision of 10 December 2013 and found that the author "has not presented any arguments capable of showing that application of the provisions of the legislation in force until 1 July 1997 adversely affected his rights and interests. It follows that the author was not treated differently or unfavourably by the national authorities in view of his non-resident status or the alleged inadequacy of the compensation (para. 101)."

3.3 The author also makes claims under article 14 (1) regarding the way in which his claim was dealt with before the Court in that the written procedure was used instead of an oral hearing by the Grand Chamber. The author therefore considers that the decision was adopted by a court composed of "faceless judges without the due safeguards of a public hearing and adversarial proceedings".[24]

3.4 The author is seeking compensation of €920,702 as the market value of his property; €300,0000 for having been prohibited from using his property since October 1997; €90,000 for having been prohibited from submitting a request for *restitutio in integrum* from the date of the entry into force of the Covenant for the State party in July 1994 until July 1997; €600,000 for the current value of the three houses on his father's land; €171,700 for the rent paid for his apartment since October 2002; and €500,000 in damages for pain and suffering. He therefore claims damages of €2,582,402 in total. He argues that had the Lithuanian Government returned his property or paid a just compensation prior to October 2002, he would not have been forced to rent an apartment. He is therefore seeking the return of his land and the houses, or compensation in the stated amount.

State party's observations on admissibility and the merits

4.1 On 1 March 2017, the State party submitted its observations on admissibility and the merits. It observes that the author's claim in relation to the alleged unlawful dismissal of his *rei vindicatio* action or the refusal to examine his two appeals in cassation by the domestic courts relates essentially to the outcome of civil proceedings for ownership of disputed houses and is of such a nature that the Committee is being asked to reassess facts upon which a national court based its decision. In this regard, the State party refers to the Committee's jurisprudence whereby "it is in principle for the courts of States parties to review facts and evidence, or the application of domestic legislation in a particular case, unless it can be shown that such evaluation was clearly arbitrary or amounted to a manifest denial of justice".[25] Thus, in the case at issue, the author has asked the Committee to act as a fourth instance and, therefore, to disregard the limits of its mandate.

4.2 The State party further considers that the author has not submitted any reasoned arguments as to the alleged arbitrariness and unfairness of the proceedings before the Kaunas Regional Court, the Court of Appeal and the Supreme Court of Lithuania. The author was given reasoned decisions by all these courts to the effect that his allegations were unfounded. The Court of Appeal, hearing the case under appellate proceedings, was able to address and remedy any flaws in the proceeding before the Kaunas Regional Court. Moreover, the allegations of the author related to the dismissal of the appeal in cassation were addressed and rejected by the Supreme Court of Lithuania in a reasoned decision issued in accordance with civil procedure law.

4.3 The State party also asserts that the author seeks to mislead the Committee by alleging that the Kaunas Regional Court and the Court of Appeal "refused to deal with his *rei vindicatio* action, without analysing the alleged property title of the occupants of his late father's houses, to which he has an absolute right". The State party argues that the two courts thoroughly examined the author's *revindicatio* action on the merits, providing reasoning in this regard. The domestic courts, having thoroughly and impartially examined the entirety of the evidence established in the case as provided for under article 185 of the Code of Civil Procedure, came to the conclusion that the civil claim of the author should be dismissed. The State party therefore asserts that the entirety of the claim under article 14 (1) is directly related to the author's dissatisfaction with the courts' assessment of facts and

[24] The author refers to communications No. 1126/2002, *Carranza Alegre v. Peru*, Views adopted on 28 October 2005; No. 70/1980, *Cubas v. Uruguay*, Views adopted on 1 April 1982; No. 10/1977, *Altesor v. Uruguay*, decision adopted on 26 July 1978; No. 44/1979, *Pietraroia v. Uruguay*, Views adopted on 27 March 1981; No. 215/1986, *van Meurs v. Netherlands*, Views adopted on 13 July 1990; No. 1058/2002, *Vargas Más v. Peru*, Views adopted on 26 October 2005; and No. 1125/2002, *Quispe Roque v. Peru*, Views adopted on 21 October 2005.

[25] See communication Nos. 1329/2004 and 1330/2004, *Pérez Munuera and Hernández Mateo v. Spain*, decision of inadmissibility adopted on 25 July 2005, para. 6.4.

evidence, which was carried out in accordance with procedures laid down by law. The author has provided no evidence of procedural irregularity or manifest arbitrariness.

4.4 Regarding the author's reference to the judgment of the European Court of Human Rights in *Vasilescu c. Roumanie*, the State party submits that the case is not analogous to the one under consideration as in that case the Court had denied a *rei vindicatio* action without any analysis by the courts of the constitutionality of the decrees establishing title and, therefore, did not consider the validity of the State's alleged property title, whereas in the author's case, that was examined thoroughly. In the present case, the conditions for restitution of property were established under the law and the domestic courts of Lithuania examined in detail whether the author met the stated conditions. However, due to the fact that it was established by domestic courts that the ownership of the disputed houses had been lawfully transferred to the former spouse of the author's father and that most of the land had been legally acquired into private ownership and assigned by the State as redeemable land, it was decided that the author did not meet the conditions.

4.5 As regards the author's reference to the Committee's jurisprudence in the cases *Carranza Alegre v. Peru*, *Vargas Más v. Peru* and *Quispe Roque v. Peru*, where the Committee found violations of article 14 (1), inter alia because the authors were tried by "faceless courts", the State party submits that these cases are completely different as they relate to criminal cases, in which procedural guarantees are different. The State party therefore considers that the allegations of the author in this regard should be dismissed as unsubstantiated.

4.6 With respect to the allegations of the author concerning the lengthy restitution proceedings and that there had been "no expeditious proceedings for 25 years", which violated his right to a fair hearing, the State party draws the Committee's attention to the fact that the matters under consideration were addressed by the European Court of Human Rights in its judgment of 10 December 2013 in the case of *Nekvedavičius v. Lithuania*. In that judgment, the Court held that there had been a breach of article 6 (1) of the Convention and article 1 of Protocol 1 thereto on account of the lengthy non-enforcement of a court order restoring the author's property by means provided for in domestic law. In this regard, the State party submits that in the case of the author, there is no possibility to restore his property rights *in natura* as most of the land has been acquired into private ownership and was assigned by the State as redeemable land. Additionally, in its decision of 12 February 2004, the Kaunas Regional Court dismissed the author's request, clearly indicating that the property rights to the land could not be restored. In the State party's view, the author's complaint as regards the lengthy restoration proceedings and his inability to restore his rights *in natura* are directly related to his dissatisfaction with domestic authorities' alleged failure to execute the judgment of the European Court. Under article 46 (2) of the Convention, the execution of final judgments of the Court is supervised by the Committee of Ministers of the Council of Ministers and, therefore, this matter is currently being actively examined under another procedure of international investigation or settlement. Accordingly, all claims related to the lengthy restitution proceedings, the inability to restore property rights *in natura* or to be awarded compensation corresponding to the market value of the disputed plot are inadmissible under article 5 (2) (a) of the Optional Protocol.[26]

4.7 Having regard to the overall questions raised under the present communication, it appears that the author seeks to question the assessment of the evidence by State authorities. The State party therefore considers that the author has failed to substantiate his claims under article 14 (1) of the Covenant for purposes of admissibility, and that they are inadmissible under article 2 of the Optional Protocol. Moreover, the author has failed to demonstrate that his rights have been violated within the meaning of article 14 (1).

4.8 Regarding the author's claim under article 26 of the Covenant that he has been discriminated against on the basis of his status "as a person living abroad", the author alleges that, in 1994, Lithuanian law excluded him from submitting a request for return of his inherited property until July 1997, and the fact that he was discriminated against on grounds of status for three years was also confirmed in the European Court's judgment in

[26] Communication No. 2155/2012, *Paksas v. Lithuania*, Views adopted on 25 March 2014.

Nekvedavičius. Referring to the Committee's general comment No. 18 (1989) on non-discrimination, the State party observes that article 26 provides that all persons are equal before the law and are entitled to equal protection of the law without discrimination, and that the law will guarantee to all persons equal and effective protection against discrimination on any of the enumerated grounds. Article 26 prohibits discrimination in law or in fact in any field regulated and protected by public authorities. In this regard, the State party notes that article 26 guarantees equality with regard to the enforcement of the law. The principle of the equal protection of the law guarantees de jure equality, so that the law dispenses rights and duties to all without discrimination. In this connection, the State party stresses that the author has not submitted any arguments or evidence that the criteria for restoring property rights in respect of non-citizens were in any way discriminatory, especially taking into account the fact that only a partial restoration in respect of the author has so far been implemented. By the decision of the National Land Service of June 2014, the author's right to .1806 hectares of land in Kaunas was restored by awarding him a compensation of €4,017, but the author has not yet obtained a new plot of land of .12 hectares for the purposes of fully restoring his property rights.[27]

4.9 The State party further refers to the jurisprudence of the Committee according to which while the Covenant enshrines the principle of non-discrimination before the law, it does not prohibit legitimate distinctions based on objective and reasonable criteria.[28] It notes that Lithuanian legislation on restitution of property rights[29] leaves it to the administrative authorities to determine whether a plot of land can be returned to its former owner in kind and, if not, to decide on appropriate compensation or to offer other forms of restoration of the property rights established in the law. The State party stresses that the judgment of 27 November 2001 obliged the administration of the Kaunas County Governor to restore the property rights of the author to his late father's plot of land on the basis of the submitted documents without indicating the form of restoration, pursuant to the national legislation. The State party also refers to the European Court's case law which states that contracting Parties have the freedom to determine the scope of property restitution and to choose the conditions under which they agree to restore property rights to former owners.[30] Moreover, as observed by the Committee on many occasions, the Covenant does not guarantee, as such, the right to restitution of property. Similarly, the Committee has reiterated in its jurisprudence that the right to property, as such, is not protected by the Covenant.[31]

4.10 Disagreeing with the allegations of the author that "the European Court of Human Rights confirmed the fact [of discrimination against the author on the ground of non-resident status] in its decision", the State party refers to paragraph 102 of the judgment of the European Court in *Nekvedavičius*, in which the contrary was stated. The Court observed that "the author has not presented any arguments capable of showing that application of the provisions of the legislation in force until 1 July 1997 adversely affected his rights and interests. It follows that the author was not treated differently or unfavourably by the national authorities in view of his non-residence status or the alleged inadequacy of the compensation." Thus, the State party considers that the author has failed to substantiate his claim under article 26 of the Covenant.

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[27] A copy of the decision of the National Land Service of 20 June 2014 on the restoration of property rights in the urban residential area to the author was attached to the original communication at enclosure No. 15a.

[28] See, inter alia, communications No. 586/1994, *Adam v. Czech Republic*, Views adopted on 23 July 1996; No. 182/1984, *Zwaan-de Vries v. Netherlands*, Views adopted on 9 April 1987, para. 13; No. 516/1992, *Simunek et al. v. Czech Republic*, Views adopted on 19 July 1995, para. 11.5; *Gratzinger v. Czech Republic*, para. 7.3; No. 1445/2006, *Polackova and Polacek v. Czech Republic*, Views adopted on 24 July 2007, para. 7.3.

[29] The Procedure and Conditions of Implementation of the Law on the Restoration of the Rights of Ownership to Citizens to the Existing Immoveable Property of the Republic of Lithuania, adopted by decision No. 1057 of 29 September 1997 of the Government of the Republic of Lithuania.

[30] See *Kopecky v. Slovakia*, paras. 30 and 55.

[31] See *Simunek et al. v. Czech Republic*, para. 4.3.

4.11 In his communication the author relied on the Committee's jurisprudence in *Simunek et al. v. Czech Republic*, *Adam v. Czech Republic*, *Marik v. Czech Republic* and *Karel Des Fours Walderode v. Czech Republic*, where it concluded that the impugned Czech legislation that made a discriminatory distinction between the individuals who were equally victims of prior State confiscations but were not Czech citizens and lived outside the Czech Republic had violated the rights of the author under article 26 of the Covenant. In all of these cases, the authors were informed by the relevant authorities that they were not entitled to restitution under the domestic law due to their non-resident status. The decisions were therefore adopted on the basis of the non-fulfilment of the citizenship precondition. The situation of the author is different, as he has never been refused to have his property rights restored on the grounds that he lived abroad in Germany. Moreover, as noted above, the author's request to have the ownership rights to the disputed house restored was dismissed, the Committee having assessed the particular circumstances of the case after the domestic courts established that the ownership of the disputed houses had been lawfully transferred to the former spouse of the author's father. Thus, the allegations of the author in this regard should be dismissed as unsubstantiated.

4.12 The State party further notes that the author failed to exhaust all domestic remedies in this regard. It observes that the author could have applied to domestic courts regarding the alleged discrimination based on non-resident status, claiming redress pursuant to article 6.271 of the Civil Code of the Republic of Lithuania. Due to the fact that the author has failed to duly exhaust all domestic remedies provided for by domestic law, the national authorities were precluded from assessing the author's allegations in this regard. Should the Committee be of the view that the author sufficiently substantiated his claims as regards the alleged violation of his right to equal protection under article 26 of the Covenant, the State party considers that this part of the communication should be declared inadmissible due to non-exhaustion of domestic remedies under article 5 (2) (b) of the Optional Protocol.

4.13 The State party therefore submits that the author has failed to substantiate his claims under article 26 of the Covenant for the purposes of admissibility, and that they should therefore be declared inadmissible pursuant to article 2 of the Optional Protocol.

4.14 Having examined the author's allegations with regard to articles 14 (1) and 26 of the Covenant, the State party holds the position that the communication must be found inadmissible under articles 2 and 5 (2) (b) of the Optional Protocol on the grounds stated above. Should the Committee find the communication admissible, the State party submits that there was no violation of articles 14 (1) and 26 for the reasons submitted above, which establish that the communication manifestly lacks substantiation. The author's claim for compensation should therefore be rejected.

Author's comments on the State party's observations on admissibility and the merits

5.1 On 8 May 2017, the author submitted his comments on the State party's observations on admissibility and the merits. He states that Lithuania was under unlawful occupation by the Union of Soviet Socialist Republics from 1945 to 1990 and that, therefore, all decisions or acts by organs of the occupying authorities are null and void.[32] This includes the decision by the people's judge acknowledging the property of the author's father as belonging to his ex-wife. The author alludes to the opinion of the International Court of Justice in the *Namibia* case,[33] and states that the Court "makes it absolutely clear that all States of the world must not recognize the validity of any acts adopted or performed by organs of an unlawful occupation regime in, for or on behalf of an illegally occupied

[32] The author points out that after the first Soviet occupation in June 1940, which ended after a popular uprising, a provisional government was installed and all the decisions of the occupying authorities, including on land reform, were declared null and void.

[33] *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971*, p. 16, para. 125.

country and to consider such acts null and void from the beginning". The only exception is in cases of the registration of births, deaths and marriages.[34]

5.2 The author also reiterates that being "behind the iron curtain" at the time, his father was unaware of the legal proceedings which had been brought in relation to his property and was therefore unable to challenge them. During the second unlawful occupation (1945–1990), no organ of the occupying regime ever passed a law nationalizing the plots of land (with houses) of the lawful owners of real estate, although they were treated by the so-called executive committees (comparable to the former town councils) as belonging to the State (i.e., the occupying regime).

5.3 The author notes that the State party does not deny that no nationalization of land took place in Lithuania. He states, however, that part of his father's land was "municipalized" by the Department of Buildings and Agricultural Matters of the Executive Committee of the City of Kaunas in accordance with the follow-up agreement to the Treaty of Non-aggression concerning the resettling of ethnic Germans. Therefore, at the time he repatriated to Germany, the real estate was taken over by the Executive Committee of Kaunas. Since the land was never renounced by the author's father, this takeover was thus a de facto expropriation. Ethnic German owners of such property were either forced to flee in order to avoid execution or were killed. "The Law Regarding the Restoration of Property Rights of Lithuanian Land Owners to the Still-existing Real Estate", which was implemented after the occupation ended, stipulated that unless land could be returned to the original owners, equivalent compensation would be paid. However, the compensation was minimal, amounting to approximately 0.5 per cent of the market value of the property or substitute land of very low value; this occurred because those who introduced the law were the same people who had been in power during the occupation and had benefited from the expropriation.

5.4 In the case of the author's father's land, the author claims that it was sold to the then inhabitants as State property for a symbolic price of approximately €116, while the current market value is €920,702. In fact, the author states that the property never belonged to the State but was instead his, inherited from his father, as confirmed in various court decisions. He also asserts that many unsuccessful lawsuits have been brought before domestic courts by others affected by these appropriations. He claims that these appropriations, which are criminal under section 183 of the Lithuanian Penal Code, were arbitrarily disregarded by the European Court. He also claims that all such property assignment contracts are null and void without needing to be declared invalid in court.

5.5 As for the State party's observations, the author states that the State party has arbitrarily selected only a few sentences from the judgment of the Kaunas Regional Court of 3 July 2003. The author refers to page 3 of the judgment, which states that, in accordance with evidence provided, it was proven that his father had owned the plot and the buildings thereon since 1926 and that he had resettled on the basis of the agreement concerning the resettlement of German citizens. The author asserts that, as stated by the Minister of the Interior of Lithuania on 31 July 2003, "no legal consequences arise for the Republic of Lithuania and her citizens [from agreements concluded by] the Russian Soviet Socialist Republic ... with other States". This shows that the State party knew perfectly well that the follow-up agreement to the Treaty of Non-aggression was null and void from the beginning and that no legal consequences could therefore arise from it.

5.6 The author points out that in the decision of the Higher Regional Court of Kaunas of 3 July 2003, the Court also established that the fact that the property was adjudged to be owned by the author's father's first wife cannot constitute *res judicata* for his father or for him, his successor in title. He argues that for this reason he had the right to have recourse to the court to have the title to the property exhaustively reviewed; that was arbitrarily denied to him, in violation of article 14, as it amounted to "manifest arbitrariness of judges and denial of justice". The author states that the Court of Appeal made no analysis of the issues. On 8 January 2004, the Selection Panel of the Supreme Court of Lithuania refused to

[34] See European Court of Human Rights, *Loizidou v. Turkey* (application No. 15318/89), judgment of 18 December 1996, para. 45.

redirect the cassation appeal to the judges of the Supreme Court as the legal arguments were not found to meet the requirements of articles 346 and 347 of the cassation rules. He states that this was not in fact the case, and refers to the statement of the Lithuanian Supreme Administrative Court that the author and his father had a right to apply to a court under article 14 of the Code of Civil Procedure in order to determine the legal title.

5.7 In its decision of 30 October 2003, the Court of Appeal did not examine the property title but stated that legal title was based on the aforementioned decision of a people's judge. In relation to the decision not to redirect the cassation appeal to the judges of the Supreme Court, the author asserts that in fact, no discretion was provided for. The author states that contrary to the State party's submission, he did not inquire about the reasons for the dismissal of the cassation but instead submitted a complaint to the then Minister of Justice, who suggested that the author go to the Head of the Civil Section of the Supreme Court of Lithuania who told him, in turn, to submit an amended cassation appeal with an application for restitution under the previous conditions (resulting, in effect, in extension of the deadline for appeal). This appeal was dismissed, however, for being submitted after an unreasonably long period of time without justification. However, the author states that the application could have been submitted within six months from the court's decision, and it was actually submitted after five months. Therefore, the refusal to admit the appeal had no basis in law and was arbitrary.

5.8 The author states that the resolution of his loss of his property claim has taken 26 years. The award of €4,017 by the Lithuanian National Land Service, made on 20 June 2014, has not yet been paid to him, as he communicated to that body, in a letter dated 13 January 2016, that he would categorically only accept the payment in the context of a down payment on the full market value of the land. He also notes that as no free land was available in Kaunas, he was told to look for land in surrounding villages, which has practically no market value.

5.9 The author challenges the State party's request to find his communication inadmissible on the basis that he has provided detailed submissions on the fact that his appeal was arbitrarily dismissed contrary to domestic and international provisions. Regarding admissibility under article 5 (2) (a) in relation to the claim before the European Court of Human Rights, he states that the customary supervision of the decision by the Court of 17 November 2015 by the Committee of Ministers of the Council of Ministers cannot be considered as another procedure of international investigation or settlement; only the decision of 10 December 2013 by the Court is relevant. Therefore, the complaint is admissible under article 5 (2) of the Optional Protocol.

5.10 As regards the claim of discrimination under article 26, held to be manifestly ill-founded by the European Court,[35] the author argues that a delay of three years before being able to assert his rights, as he was unable to do because he was a non-citizen,[36] is discrimination on grounds of status. The author quotes the Committee's jurisprudence in *Simunek v. Czech Republic*, whereby the Committee found that the condition of citizenship or residence was unreasonable, and the State party did not submit grounds which would justify the restrictions imposed. Moreover, the authors in that case had left the State party because of their political opinions or because they emigrated. The author submits that this mirrors his situation, as his father was forced to repatriate to Germany. He states that his claim under article 26 is therefore substantiated for purposes of admissibility.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claims contained in a communication, the Committee must decide, in accordance with rule 93 of its rules of procedure, whether it is admissible under the Optional Protocol.

[35] The Court held that the author had not presented any arguments demonstrating that the application of the provisions of the legislation in force until 1 July 1997 adversely affected his rights and interests.

[36] The author includes a letter from the then Supreme Council of Lithuania explaining the situation.

6.2 The Committee notes the claim by the State party that the author did not raise the discrimination claim before domestic courts, that the author's claims regarding the execution of the November 2001 judgment are still pending enforcement of the decision of the European Court of Human Rights and are therefore still pending before another procedure of investigation or settlement, and finally that the author's claims in relation to the *rei vindicatio* action amount essentially to an attempt to challenge the State party authorities' consideration of facts and evidence and the interpretation of domestic legislation. The Committee notes the author's assertion that he did in fact raise the discrimination claim under article 26 before the domestic courts and before the European Court, which reviewed the claim. It further notes the author's statement, in relation to the execution of the restitution judgment, that it has been decided in his favour and is therefore no longer pending before the European Court, and that the Committee of Ministers is a separate body and not a recognized international procedure. It also notes the author's claims that the decision on the *rei vindicatio* action was arbitrarily dismissed and that such dismissal amounted to a denial of justice since the legal title to the land was never examined, contrary to both international law and the Lithuanian Code of Civil Procedure.

6.3 The Committee observes that the claim of discrimination on the ground of being a non-citizen was dismissed by the European Court as manifestly ill-founded. The Committee notes the State party's argument that this claim was not brought before domestic authorities and that domestic remedies have therefore not been exhausted. The Committee further notes the author's claim that the matter was raised domestically and points as proof to the fact that the matter of discrimination was considered by the European Court without being dismissed on grounds of non-exhaustion of domestic remedies. Nonetheless, the Committee finds nothing on file to indicate that this matter was raised domestically, and that the decision of the European Court to dismiss the claim on other grounds cannot be construed as affirming the exhaustion of domestic remedies. The Committee therefore concludes that it is precluded from considering this element of the author's claim under article 26 of the Covenant, in accordance with article 5 (2) (b) of the Optional Protocol.

6.4 Concerning the author's claim under article 14 of the Covenant, which relates to the execution of the judgment of November 2001, the Committee notes the State party's argument that, in relation to the elements on the basis of which a violation was found by the European Court under article 6 (1) in its judgment of 10 December 2013,[37] all claims relating to this judgment should be disregarded as inadmissible under article 5 (2) of the Optional Protocol.[38] It also notes the author's claim that the judgment remains unenforced and that since the Court is no longer reviewing the claim with regard to which the judgment had been issued, it can no longer be regarded as being considered under another procedure of international investigation or settlement for the purposes of article 5 (2) (a). The Committee considers that the purpose of article 5 (2) (a) is to avoid the duplication of claims before international mechanisms. It therefore considers that it would be contrary to both the letter and spirit of this principle to consider a matter which is still subject to a follow-up procedure before another procedure of international investigation or settlement unless exceptional circumstances exist, such as unreasonable delays in the follow-up procedure or its patent ineffectiveness. The Committee notes that, according to article 46, paragraph 2, of the European Convention on Human Rights, the execution of final judgments of the European Court of Human Rights is supervised by the Committee of Ministers of the Council of Ministers. It further recalls its Views in *Paskas v. Lithuania* in which it held, in accordance with article 5 (2) (a) of the Optional Protocol, that a matter subject to follow-up before the Committee of Ministers of the Council of Europe constitutes a matter concurrently being examined under another procedure of international investigation or settlement.[39] The Committee thus considers that, in the absence of any

[37] In accordance with article 46 of the Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocol No. 11 thereto, the Committee of Ministers supervises the execution of judgments of the European Court of Human Rights. This work is carried out mainly at four regular meetings every year.

[38] Since the enforcement of the judgment is now subject to the oversight of the Council of Ministers.

[39] See *Paskas v. Lithuania*, para. 7.2. See also European Court of Human Rights, *Burdov v. Russia* (application No. 59498/00), judgment of 7 May 2002 para. 34; and *Hornsby v. Greece* (application

further information provided by the parties, these parts of the communication, which relate to the author's claims about the State party's continuing failure to execute the November 2001 judgment, upon which the decision of the European Court was based, constitute a matter currently being actively examined under another procedure of international investigation or settlement and are therefore inadmissible under article 5 (2) (a), of the Optional Protocol.

6.5 Regarding the author's claim under article 14 in relation to the *rei vindicatio* decisions of the Regional Court, the Court of Appeal and the Supreme Court, the Committee notes that although this claim was submitted to the European Court of Human Rights, it was found inadmissible for having been submitted after the time limit introduced by the six-month rule, since the decision of the Supreme Court on the second cassation appeal was considered an extraordinary remedy. The Committee notes that a significant amount of time elapsed between the last domestic decision handed down in 2003 and the author's submission of his complaint to the Committee in 2014. It recalls that under rule 96 (c) of the Committee's rules of procedure, a delay in submission will not automatically constitute an abuse of the right of submission, but that there might be abuse if the complaint is submitted after five years from the exhaustion of domestic remedies or, where applicable, after three years from the conclusion of another procedure of international investigation or settlement, unless there are reasons justifying the delay taking into account all the circumstances of the case. The Committee considers that in the present case, having regard to the complicated and protracted domestic proceedings and their follow-up, and considering that the author had in the meantime lodged other complaints, namely with the European Court (which issued its decision on the inadmissibility of the relevant part of the claim in 2013, a year before the initial submission of the communication), it is not possible to conclude that the mere passage of time between the last judgment issued by the State party and the filing of the communication renders it an abuse of the right of submission. Therefore, and in the absence of any claims by the State party in this regard, the Committee finds that it is not precluded from considering this part of the claim for reason of a delay in its submission.

6.6 Regarding the author's claims of the politically motivated nature of the decisions taken by domestic authorities, the Committee notes that no substantiation has been provided in this regard. It therefore finds this part of the complaint inadmissible under article 2 of the Optional Protocol.

6.7 As regards the author's claims relating to the manner in which his claims were disposed of by the European Court of Human Rights, the Committee concludes that the Court is not an organ of any State party to the Covenant and the Optional Protocol. Therefore, such claims are inadmissible *ratione materiae* under article 3 of the Optional Protocol.

6.8 The Committee notes the author's remaining claim that by dismissing his *rei vindicatio* claim, the Court of Appeal decided the case without relying on any specific norm of law valid in the Republic of Lithuania. The Committee further observes that the Court of Appeal decided that although many who resettled in Germany pursuant to the Treaty of Non-aggression agreements did so under varying degree of duress, the property in question had been awarded to the first wife of the author's father under the decision of the Court of Stalin District in Kaunas on 26 June 1948 which, until either quashed or altered, is obligatory,[40] irrespective of the fact that it was adopted at a time in which the State party considers itself to have been under occupation. The Committee notes in this regard the author's arguments that international law deems decisions taken by the authorities of an illegal occupation to be null and void. It also notes the decision of the Lithuanian Constitutional Court in 1994 that parliament, in choosing a partial reparation principle, had been influenced by prevailing difficult political and social conditions and that "new generations had grown up, and new proprietary and other socioeconomic relations had been formed during the 50 years of occupation, which could not be ignored in deciding the

No. 189357/91), judgment of 19 March 1997, para. 40. In both cases the Court held that execution of a judgment is part of the trial.

[40] Articles 14 and 18 of the Code of Civil Procedure of 1964.

question of the restitution of property",[41] and recalls the advisory opinion of the International Court of Justice in the *Namibia* case in which the Court noted that the invalidity of legal acts passed by an illegal regime "cannot be extended to those acts, such as, for instance, the registration of births, deaths and marriages, the effects of which can be ignored only to the detriment of the inhabitants of the Territory".[42] The Committee recalls that the advisory opinion had been understood by the European Court of Human Rights as covering other private law relationships as well.[43] It further observes that the property in question was not confiscated by the then State authorities, but rather assigned in a 1948 court decision to the author's father's ex-wife, and subsequently to her daughter. Bearing also in mind that the Covenant does not protect the right to property per se, the Committee is not persuaded by the author's claims regarding the absolute duty of the State party under international law in general, and the Covenant in particular, to regard the 1948 decision regarding the private property title over his father's houses as null and void.

6.9 The Committee further takes note of the arguments raised by the State party that the author's claim in relation to the dismissal of his *rei vindicatio* action and the refusal to examine his two appeals in cassation were fully considered by the domestic courts in accordance with the Code of Civil Procedure; that the claims in this regard therefore relate essentially to the outcome of civil proceedings on competing claims for ownership over property, and the appropriate remedy for loss of property; and that the author's claims are essentially of such a nature that the Committee is being asked to reassess facts and the interpretation of domestic law upon which a national court based its decision, and thus to disregard the limits of its mandate.

6.10 In reviewing the material before it, the Committee considers that the author has not identified any irregularity in the decision-making process, or any factor that the State party's authorities failed to take properly into account in assessing his claims. While the author disagrees with the factual conclusions of the State party's authorities, he has not shown that those conclusions were clearly arbitrary or amounted to a manifest denial of justice. The Committee recalls that it is generally for the courts of States parties to evaluate facts and evidence in a particular case, unless it can be ascertained that the evaluation was clearly arbitrary or amounted to a denial of justice.[44] The Committee considers that the information on file does not contain any elements to demonstrate that the court proceedings suffered from such defects. In the light of the above, the Committee considers that the author failed to substantiate his claim that the *rei vindicatio* proceedings brought by him violated his rights under article 14 (1) of the Covenant.

7. The Human Rights Committee therefore declares that:

(a) The communication is inadmissible under articles 2, 3 and 5 (2) (a) of the Optional Protocol;

(b) That the decision shall be communicated to the State party and the author.

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[41] The Court noted that the authorities of Lithuania, as a State re-established in 1990, were not responsible for the Soviet occupation half a century earlier, nor were they responsible for the consequences of that occupation. It held that in the 1940s many private persons had bought, in accordance with the legislation applicable at that time, various properties which had previously been nationalized. It was impossible to deny those factual and legal aspects, and the domestic legislation on the restitution of property duly took into account the interests not only of the former owners, but also of private persons who had occupied or purchased the property by way of legal contracts.

[42] See *Legal Consequences for States of the Continued Presence of South Africa in Namibia*, para. 125.

[43] See *Cyprus v. Turkey* (application No. 25781/94), judgment of 10 May 2001, paras. 96–97.

[44] See communications No. 1616/2007, *Manzano et al. v. Colombia*, decision of inadmissibility adopted on 19 March 2010, para. 6.4, and No. 1622/2007, *L.D.L.P. v. Spain*, decision of inadmissibility adopted on 26 July 2011, para. 6.3.